## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	MDL NO. 1456 CIVIL ACTION NO. 01-CV-12257-PBS
THIS DOCUMENT RELATES TO	Judge Patti B. Saris
STATE OF NEVADA V. AMERICAN HOME PRODUCTS, ET AL. CIVIL ACTION NO. 02-CV-12086-PBS	
STATE OF MONTANA V. ABBOTT LABORATORIES, ET AL. CIVIL ACTION NO. 02-CV-12084-PBS	

## WATSON PHARMACEUTICALS, INC.'S MOTION TO DISMISS THE STATE OF MONTANA'S SECOND AMENDED COMPLAINT AND THE STATE OF NEVADA'S AMENDED COMPLAINT

Watson Pharmaceuticals, Inc. ("Watson") moves to dismiss the Second Amended
Complaint filed by the State of Montana and the Amended Complaint of the State of Nevada
(collectively the "Amended Complaints") against Watson pursuant to Federal Rule of Civil
Procedure 4(m) and Local Rule 4.1 for failure to properly serve Watson.

Plaintiffs filed their respective Amended Complaints with this Court on August 1, 2003. To date, Watson has not been properly served with a summons or Amended Complaint by either party as required under the federal rules or rules of this Court. Further, Watson has not waived service of process in this action.

In accordance with Local Rule 7.1(a)(2), the undersigned certifies that, on November 24, 2004, he spoke with counsel for plaintiffs on this motion, and counsel for plaintiffs indicated that he will oppose the motion.

Watson relies on the enclosed Memorandum of Law and the Declaration of Douglas B. Farquhar in support of this Motion to Dismiss.

WHEREFORE, Watson respectfully moves that this Court dismiss all claims in the Amended Complaints as to Watson and provide such other and further relief as this Court deems just and proper.

Respectfully submitted,

Douglas B. Farquhar pro hac vice Hyman, Phelps & McNamara, P.C.

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Date: Nov. 24, 2004